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*Counsel for Defendants Premier Orthopaedic and Sports Medicine Associates of Southern New Jersey, LLC, trading as Premier Orthopaedic Associates, Premier Orthopaedic Associates Surgical Center, LLC, Kimberly Yvette Smith, M.D., a/k/a Kimberly Yvette Smith-Martin, M.D., Thomas Dwyer, M.D., Rhaul Shah, M.D., John Catalano, M.D., Richard C. DiVerniero, M.D., and Richard Strauss, M.D.*

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

IN RE: NEW ENGLAND COMPOUNDING  
PHARMACY, INC. PRODUCTS  
LIABILITY  
LITIGATION

THIS DOCUMENT RELATES TO:  
  
ALL NEW JERSEY CASES

MDL No. 2419  
Docket No. 1:13-md-2419 (RWZ)

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**PREMIER ORTHOPAEDIC AND SPORTS MEDICINE ASSOCIATES, ET AL'S  
JOINDER AND MOTION FOR ACCESS TO THE RUST/OMNI REPOSITORY**

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Defendants Premier Orthopaedic and Sports Medicine Associates of Southern New Jersey, LLC, trading as Premier Orthopaedic Associates, Premier Orthopaedic Associates Surgical Center, LLC, Kimberly Yvette Smith, M.D., a/k/a Kimberly Yvette Smith-Martin, M.D., Thomas Dwyer, M.D., Richard C. DiVerniero, M.D., and Richard Strauss, M.D. (collectively, "Premier Defendants") hereby join the Box Hill Defendants; Specialty Surgery Center, Crossville, PLLC ("SSC"), Kenneth R. Lister, M.D. ("Dr. Lister"), and Kenneth Lister, M.D., P.C.; and Advanced Pain & Anesthesia Consultants PC d/b/a APAC Centers for Pain Management, et al., and move

the Court for access to the Rust/Omni Repository. The Premier Defendants' grounds for this motion are as follows:

1. This Motion relates to all New Jersey cases, including specifically those listed in the attached **Schedule A**.
2. The Court ordered the creation of a document repository known as the Rust/Omni Repository in June 2013 as a response to the Plaintiff's Steering Committee ("PSC") and Chapter 11 Trustee's request. See Dkt. Nos. 192, 224, and 237.
3. The PSC informed Defendants via letter in November, 2013 that it had "made all formal discovery produced by plaintiffs, defendants, or non-parties available through the Rust and U.S. Legal Repositories." See Dkt. 2480, Exhibit A. The PSC further indicated that the Rust Repository "contains protected health information. Specifically, it contains: (i) information produced to Lead Counsel by clinics in response to Judge Boroff's order in the bankruptcy court requiring clinics to identify patients who were injected with contaminated MPA; and (ii) information produced informally by NECC that included patient information or other protected health information. Under the terms of Judge Boroff's order and the PSC's agreement with NECC, the PSC is not permitted to share any of this information with defendants at this time." See Dkt. 2480, Exhibit A.
4. Upon information and belief, the PSC has had access to this information since the Repository's inception.
5. The PSC issued a letter on October 23, 2015 indicating that a Court order would be needed pursuant to the June 21, 2013 Order when defendants contacted the PSC regarding access to the Rust/Omni Repository. The PSC also indicated that it did not anticipate opposing any motion seeking access to the repository other than "any attempt by defendant to gain

access to HIPAA protected information produced by unrelated defendant clinics.” See Dkt. 2480, Exhibit B.

6. In the Court’s June 21, 2013 Order, the Court expressly provided that, “[i]n the event Defendants wish to use documents, data or other information produced pursuant to the subpoenas and this Order, they may seek permission of the Court to do so.” See Dkt. No. 192, Para. 6.
7. The Premier Defendants hereby request an order granting them access to the documents contained in the Omni/Rust repository which relate to the New Jersey cases/plaintiffs. The Premier Defendants are not seeking access to private medical information of claimants not involved in non-New Jersey cases or who are not New Jersey plaintiffs.
8. It is unclear what information and documents are contained within the Omni/Rust Repository. In the event the Court determines not to grant complete access, the Premier Defendants hereby request that the Order includes the need that the PSC provide a general Index to all documents in the Omni/Rust Repository so it can be understood what documents have been deposited therein.

WHEREFORE, the Premier Defendants respectfully request that the Court grant this Motion for access to the documents within the Rust/Omni Repository which relate to the New Jersey cases/plaintiffs, and for a general Index created by the PSC describing all documents within the repository if complete access is denied.

Dated: December 11, 2015

Respectfully submitted,

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**CERTIFICATION**

I certify that in submitting this *JOINDER AND MOTION*, I caused a copy of the above to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's System, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

Dated: December 11, 2015

/s/ Christopher M. Wolk  
Christopher M. Wolk, Esq.

## SCHEDULE A

<b><u>Caption</u></b>	<b><u>Docket</u></b>
<i>Akers, et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:14-cv-13910-RWZ
<i>Askins et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:14-cv-13905-RWZ
<i>Bacigalupo et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:14-cv-13962-RWZ
<i>Baird et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:14-cv-13946-RWZ
<i>Bane et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:14-cv-13599-RWZ
<i>Bazikos et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:14-cv-13163-RWZ
<i>Bolton et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:14-cv-13904-RWZ
<i>Burrell et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:14-cv-13958-RWZ
<i>Campbell, Clinton et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:14-cv-13916-RWZ
<i>Campbell, Fritz et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:14-cv-13909-RWZ
<i>Chambers et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:14-cv-11822-RWZ
<i>Chann, et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	2:15-cv-03690-ES-MAH *(Currently District of New Jersey)*
<i>Dersch et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:14-cv-13164-RWZ
<i>Devilli et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:13-cv-11167-RWZ
<i>Drain et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:14-cv-13673-RWZ
<i>Effendian et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:13-cv-11233-RWZ
<i>Federico et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:14-cv-13956-RWZ
<i>Fisher et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:14-cv-13601-RWZ
<i>Garcia et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:14-cv-14084-RWZ
<i>Goff et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:14-cv-13913-RWZ
<i>Gonzalez et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:14-cv-13949-RWZ

<i>Gould et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:13-cv-10444-RWZ
<i>Guzman et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:12-cv-12208-RWZ
<i>Hannah et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:13-cv-10407-RWZ
<i>Headly et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:15-cv-10258-RWZ
<i>Hermens et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:14-cv-13945-RWZ
<i>Hollywood et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:14-cv-13951-RWZ
<i>Jones, Meagan et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:13-cv-10409-RWZ
<i>Jones, Preston et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:14-cv-13907-RWZ
<i>Kirby et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:14-cv-13960-RWZ
<i>Leaverton et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:13-cv-10408-RWZ
<i>Letizia et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:13-cv-10442-RWZ
<i>Marko et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:13-cv-10404-RWZ
<i>McBride et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:14-cv-14152-RWZ
<i>McCoy et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:14-cv-13911-RWZ
<i>Morell et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:14-cv-13961-RWZ
<i>Normand et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:13-cv-10447-RWZ
<i>Overstreet et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:14-cv-13760-RWZ
<i>Parkell et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:14-cv-13640-RWZ
<i>Pennington et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:13-cv-10406-RWZ
<i>Ramos et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:14-cv-13957-RWZ
<i>Rios et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:13-cv-10411-RWZ
<i>Rivera et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:14-cv-13943-RWZ
<i>Roagers et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:14-cv-13915-RWZ

<i>Santiago et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:14-cv-13959-RWZ
<i>Schwab et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:14-cv-13914-RWZ
<i>Shannon et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:14-cv-13555-RWZ
<i>Snead et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:14-cv-11821-RWZ
<i>Stech et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:14-cv-13952-RWZ
<i>Styles et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:14-cv-13953-RWZ
<i>Tayvinsky et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:13-cv-10414-RWZ
<i>Tisa et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:13-cv-10446-RWZ
<i>Toletti et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:13-cv-10413-RWZ
<i>Trout et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:14-cv-13954-RWZ
<i>Warfle et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:14-cv-13908-RWZ
<i>West et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:14-cv-13165-RWZ
<i>Zavacki et. al. v. inter alia Premier Orthopaedic Associates, et.al.</i>	1:13-cv-10441-RWZ